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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/978,114	10/15/2001	Richard H. Jones	PHB 34-221A	3750

7590 11/05/2002

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EXAMINER

CONTEE, JOY KIMBERLY

ART UNIT

PAPER NUMBER

2681

DATE MAILED: 11/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No. <b>09/978,114</b>	Applicant(s) <b>Jones et al.</b>
Examiner <b>Joy K. Conte</b>	Art Unit <b>2681</b>

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1)  Responsive to communication(s) filed on Aug 13, 2002

2a)  This action is **FINAL**. 2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle* 1035 C.D. 11; 453 O.G. 213.

4)  Claim(s) 11-19 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 11-19 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

1)  Notice of References Cited (PTO-892)

2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_

4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_\_

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## **DETAILED ACTION**

### *Response to Arguments*

1. Applicant's arguments filed August 13, 2002 have been fully considered but they are not persuasive.

Examiner contends that the newly added independent claims 11,15 and 19 are anticipated by the previously used Watanbe (EP 0709812) reference. Applicant primarily emphasizes in the argument that the Watanbe reference does not disclose "creating" a unique melody derived from the numeric data representing the telephone number, wherein the numeric data representing the telephone number is not interpreted as a telephone number sequence but as individual digits. The DSP audio processor and the memory containing sound elements in Watanbe reads on creating a unique melody derived from the numeric data (col. 5, lines 4-49). Since the unique calling sounds maybe selected in response to the state of incoming call, Watanbe reads on deriving such a calling sound from number data representing a telephone number (col. 5, lines 20-55). However, Examiner interprets Applicant's claimed "numeric data representing the telephone number from which the message was initiated" to read on a telephone number sequence of an incoming caller, e.g., caller identification. Further, the independent claims 11,15 and 19 do not specifically claim a unique melody derived from individual digits representing a telephone number. Thus Examiner maintains rejection under 35 USC 102(e) for newly added independent claims 11,15 and 19.

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***Claim Objections***

2. Claims 14 and 18 are objected to because of the following informalities: in line 1 of each claim, "mean" should read "means". Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

4. Claims 11,12,14,15,16,18 and 19 are rejected under 35 U.S.C. 102(a) as being anticipate by Watanabe et al. ("Watanabe"), EP 0709812, previously used.

Regarding claims 11, 15 and 19, Watanabe discloses a communications system (and receiver for use in a communication system and a method for generating a melody in a receiver) comprising:

a controller (i.e., CPU 21) for communication with at least one base station (col.3, lines 54-58 to col. 4, line 4);

a receiver unit able to communicate with at least one base station, the receiver unit comprising:

a receiver for receiving a message transmitted from the base station (col. 1, lines 10-13 and col. 2, lines 1-8); and

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means for creating (i.e., via sound elements data read from the memory for generating calling sound) and audibly playing a unique melody derived from the numeric data representing the telephone number from which the message was initiated (col. 1, lines 13-24 and col. 5, lines 29 to col. 6, line 43).

Regarding claims 12 and 16, Watanabe discloses a communications device as claimed in claims 11 and 15, respectively, wherein the means audibly plays the unique melody *inherently* on the basis of at least tempo and notes (i.e., selectable parameters or a piece of music) derived from the numeric data (col. 5, lines 4-21 and lines 32-49).

Regarding claims 14 and 18, Watanabe discloses the a communication system as claimed in claims 11 and 15, respectively, wherein the means includes a transducer for audibly playing the unique melody (col. 4, lines 9-14).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) a patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 13 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watanabe, in view of Morishima, U.S. Patent No. 6,075,998, previously used.

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Regarding claims 13 and 17, Watanbe discloses a communication device as claimed in claims 11 and 15, respectively, wherein each digit of the telephone number from which the message was initiated has associated with it a melodic characteristic selected from the group consisting of tone, repetition of the melody and notes (see Fig. 3 and col. 5, lines 10-35).

At the time of the invention it would have been obvious to one of ordinary skill in the art to have modified Watanbe to include a melodic characteristic for each digit of telephone number of incoming caller which consists of tone, repetition and notes as is known in the art as taught by Morishima (col. 6, lines 18-63).

Motivation for doing would have been for the purpose of allowing the user to the create a musical tone pattern based on numerical data provided in a radio signal for announcing a reception of a call.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR

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1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joy K. Contee whose telephone number is (703) 308-0149, M-F, 5:30 a.m. to 2:00 p.m.

If attempts to reach the Examiner are unsuccessful, her supervisor, Dwayne Bost can be reached on (703)305-4778.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703)306-0377.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

**or faxed to:**

(703) 872-9314 (for formal communications intended for entry)

**Or:**

(703) 872-9314 (for informal or draft communications, please label  
"PROPOSED" or "DRAFT")

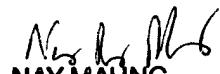
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*Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).*



Joy K. Contee

November 2, 2002



NAY MAUNG

**PRIMARY EXAMINER**